

**NJS Presents****The 2018 Paul A. Stellhorn New Jersey History Award Winning Undergraduate Papers****In this Issue:*****Statehood and Sovereignty:******A Case Study of William Livingston from Philosophe to Federalist*****By Caleb Dagnall****DOI: <http://dx.doi.org/10.14713/njs.v5i1.153>**

*In 1776, in the midst of the American struggle for independence, William Livingston became the first elected Governor of New Jersey. Having been significantly influenced by the works of Enlightenment thinkers and philosophes, William Livingston holds a unique place in history as a bridge between intellectual political theory and its practical application in the American Revolution and the creation of our nation. As governor, he oversaw the transformation of New Jersey from a colony – under British tyranny and then under their own state constitution – to a sovereign state – under the Articles of Confederation – and finally to a member of a federal union – under the Constitution of the United States that he was instrumental in drafting and ratifying. This paper examines William Livingston as a case study of early American political thought regarding the concepts of statehood and sovereignty. Through the analysis of his published and unpublished papers, the relationship between these concepts is outlined within a sociopolitical context through the governments he helped shape. Despite the lack of existing writings demonstrating Livingston's sympathies towards either side of the Federalist debate, a careful study of his writings reveals Livingston to be a Pragmatic Federalist.*

**Introduction**

The Constitution of the United States, the framework for a system of government that has been in continuous operation for over two hundred and twenty years, has become the single most important legal document in American history and has garnered credence as one of the most important legal documents in world history. However, at the time of the original drafting of the document, the Constitution of the United States was viewed as a product of partisan politics and evoked more dissonance and hostility than unity and patriotism. Even at its eventual implementation, the Constitution was not nearly as romanticized as it has become in posterity.

At the outset, the Federal Convention of 1787, legally speaking, was only endorsed to amend the Articles of Confederation and resolve many of the problems that arose from its flawed structure.<sup>1</sup> Many individuals, such as James Madison, however, prepared for the convention with a very different plan in mind, which was to cast aside the Articles of Confederation completely and begin anew. Henry Knox voiced his own stance on the convention to George Washington, writing, “But if only propositions be obtained for bracing up the present radically defective thing<sup>2</sup>, so as [to] enable us to drag on with pain and labor, for a few years, then better had it been, that the idea of the convention had never been conceived.”<sup>3</sup> Arguing on the behalf of Washington’s reputation if he were to participate in the convention, Knox continued:

Were the convention to propose only amendments, and patch work to the present defective confederation, your reputation would in a degree suffer—But were an energetic, and judicious system to be proposed with Your signature, it would be a circumstance highly honorable to your fame, in the judgement of the present and

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<sup>1</sup> “Resolved that...a Convention of delegates...be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions...” (Confederation Congress endorsement of the Philadelphia Convention), Journals of the Continental Congress (JCC), Vol.32, 73-74, n.1-3; “Proceedings of Commissioners to Remedy Defects of the Federal Government : 1786,” Avalon Project - Documents in Law, History and Diplomacy, accessed May 20, 2018, [http://avalon.law.yale.edu/18th\\_century/annapoli.asp](http://avalon.law.yale.edu/18th_century/annapoli.asp); See “Delegate to the Federal Convention.”

<sup>2</sup> The Articles of Confederation.

<sup>3</sup> Henry Knox, “To George Washington, 19 March 1787,” Founders Online, accessed May 20, 2018, <https://founders.archives.gov/documents/Washington/04-05-02-0095>.

future ages; and doubly entitle you to the glorious republican epithet—The Father of Your Country.<sup>4</sup>

Despite the legally endorsed scope of the Federal Convention of 1787, the personal and political goals of the delegates such as James Madison, and spectators such as Henry Knox, rapidly redirected the objective of the convention. Within a short time of convening at the Pennsylvania State House, it was clear that amendments to the Articles of Confederation would be insufficient in addressing its flaws. The convention delegates soon moved to draft an entirely different document that would lay out the structure for a new national government to rule over the United States.

While many issues were debated, discussed, assigned to committees, and argued over throughout the summer of 1787, almost all of the issues – with the exception of the debate over the structure of the Legislature and, perhaps, over the issue of slavery – paled in comparison to the debate over the issue of Federalism. The question that the delegates of the Federal Convention of 1787, like Governor William Livingston of New Jersey, had to wrestle with was: Should the new government of the United States be one defined by a small national government that is directed by, and has its power limited by, strong state governments or one defined by its strong national government that relies on the acquiescence and submission of the weaker state governments?

What was being debated was not a mere argument of semantics but a greater political and philosophical discussion of the roles of sovereignty and statehood. Only ten years prior, the Continental Congress declared independence from Great Britain on the basis of a violation of the sovereignty of the colonies, but was that sovereignty collective or respective? Prior to drafting the Declaration of Independence, the Continental Congress had recommended to the colonial assemblies that each draft for themselves documents defining and outlining new forms of

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<sup>4</sup> Knox, “To George Washington, 19 March 1787,” Founders Online.

government in each of their colonies.<sup>5</sup> Shortly thereafter, the Continental Congress assigned a committee to draft a document of their own to layout the structure, function, and powers of the new joint colonial congress – a document that, once instituted, would become known as the Articles of Confederation.<sup>6</sup> This document defined the limited scope within which the confederation congress could operate and allowed for each colony to exercise almost complete authority over its own jurisdictions. Both of these initiatives indicated that the colonies' intention in declaring independence was to simultaneously declare, for themselves, complete autonomy and sovereignty. However, after ten years, debt was rising, payments were decreasing, confidence was all but destroyed, and the sovereignty that the colonies had so desired seemed all for naught. As such, the Federal Convention of 1787 was called. Sovereignty had to be reevaluated and, thus, statehood had to be reevaluated. By mimicking the principles of individual liberty that Rousseau posited in his work, *The Social Contract*, would the states be willing to forfeit some of their liberty – in this case their legislative and judicial sovereignty – in order to have more of their rights and liberties protected by a national government. Hence, the delegates task would be to determine whether they could reconcile statehood and sovereignty in the existing governmental system or whether the only solution to their problems lay in the institution of a new national government? In other words, the delegates could only accomplish one of two things at the federal convention: amend and improve upon the Articles of Confederation, retaining a truly federal system, or draft a radically different document that vested much more power in a centralized national government. Having engaged both theoretically and practically with the concepts of sovereignty and statehood, Governor William Livingston's experience in all matters of political theory and practice qualified

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<sup>5</sup> JCC, Vol. 4, 341-42, 51, 57-58. Letters of Members of the Continental Congress, Vol. 1, No. 637 "John Adams to James Warren," 445-46; More on this in "From Harbingers of War to Election."

<sup>6</sup> JCC, Vol. 5, 431, 33, 546-54; JCC, Vol. 9, 907-28.

him, as a delegate to the Federal Convention of 1787, to be a voice of insight and understanding into the issue of Federalism.

However, this singular issue did not find its resolution within the walls of the Pennsylvania State House. Once the Constitution was fully drafted and signed by the delegates to the federal convention, the issue of Federalism was exacerbated and magnified as the debate extended across every state in the confederation. Most notably in Virginia and New York, the ratification of the new US Constitution, and thus its ultimate fate, rested squarely on the issue of Federalism.<sup>7</sup> Much was written by the opposing sides; each side argued the merits of its position both in the state assemblies as well as directly to the public through speeches and publications. It quickly became clear who supported each ideology. Those supporting a small, truly federal government included Governor George Clinton of New York as well as Revolutionary Patriot Patrick Henry of Virginia. Supporting the Constitution and a strong national government, calling themselves “Federalists,” and referring to their opposition as the “Anti-Federalists,”<sup>8</sup> were Alexander Hamilton of New York and James Madison of Virginia. Writing a total of 85 articles and essays supporting their position, Alexander Hamilton, John Jay, and James Madison argued on behalf of the Constitution and reasoned why a strong national government was necessary.<sup>9</sup>

While these debates were contentious, the Federalists eventually won out, succeeding in securing the ratification of the new Constitution. In the Virginia assembly, the Anti-Federalists only acquiesced and agreed to ratify the Constitution upon the promise that a series of amendments would be added to the Constitution upon ratification ensuring certain rights to the people and

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<sup>7</sup> See Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788* (New York: Simon & Schuster, 2010).

<sup>8</sup> For the purpose of this paper, I will continue to refer to the opponents of the Constitution as *Anti-Federalists* in effort to remain consistent with quoted sources and with the historic conventions that many are familiar with; Maier, *Ratification*, xiv. See “Ratification and Factionalization.”

<sup>9</sup> Alexander Hamilton et al., *The Federalist* (New York: Barnes & Noble Books, 2006).

further defining the new government's jurisdiction. As a similar battle waged in New York, victory only came through Hamilton's threat that New York City would secede from the state if the New York legislature did not ratify the Constitution. Taking Hamilton's ultimatum seriously, the New York Legislature did ratify the Constitution.

With Federalists on one side, arguing for a strong centralized national government, and Anti-Federalists on the other side arguing for strong state governments, many found themselves lying between the two extremes. While young political idealists like Alexander Hamilton and James Madison argued the theoretical merits of the Federalist position, others, like William Livingston, based their position on Federalism in their extensive political and governing experience. Livingston's insights, as a *pragmatic Federalist*, can be used as a case study to better grasp the perspective he shared with many others who played pivotal roles in the founding of the United States but who refrained from interjecting themselves in the Federalism debates. His disposition grants historians and scholars a far more nuanced perspective into the subtleties of the Federalist debate.

William Livingston, from an early age, was known for his staunch political beliefs and principles. Educated at Yale where he studied the classics, law, and theology, ten shortly thereafter beginning a career in New York practicing law, Livingston epitomized an eighteenth-century North American philosophe. Influenced by, and a student of, great Enlightenment political thinkers such as John Locke, as well as being well-versed in other more contemporary theorists like Jean-Jacques Rousseau, Livingston commanded the intellectual respect of elitist New York society. He was an ardent critic of the English Crown and decried Great Britain's treatment of the American

colonies. However, Livingston also saw government ideally run by the aristocracy, trained and educated, to rein in the licentiousness of the governed.<sup>10</sup>

William Livingston represented New Jersey in the First and Second Continental Congress, but left at the beginning of June 1776 to serve as Brigadier General of the New Jersey militia. At the same time, the New Jersey assembly recalled the previous delegation in favor of sending a new one, headed by John Witherspoon, with the express directions to vote in favor of independence. Livingston was hesitant in calling for the American colonies' independence from Great Britain. He was resolute in his opposition to British rule and detested their influence, both through the Anglican episcopacy and political matters, in the colonies. However, he believed that the colonies should defer the call for independence until a formal alliance with France was procured. Nonetheless, once independence was declared, Livingston did everything in his power, risking money, property, and safety, to support the Continental Army and the infantile governments of New Jersey and the Confederation.<sup>11</sup>

Holding devout political principles and core beliefs, his precedence of being the first elected Governor of New Jersey, and, correspondingly, being responsible for setting the gubernatorial precedents within the context of the new United States, qualifies him for study as to where someone of his station and experience lay in regard to Federalism. As Governor of New Jersey, he oversaw a state that was in favor of independence, became the seat of the ensuing war, and which felt, first-hand, the disastrous repercussions of mounting war debt. Stemming from the state's history as two independent colonies of East Jersey and West Jersey, New Jersey struggled to achieve unanimity on any given issue even through Governor Livingston's tenure.

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<sup>10</sup> Michael L. Levine, "The Transformation of a Radical Whig Under Republican Government" (Rutgers University Ph.D. thesis, 1975).

<sup>11</sup> Lurie, Maxine N. "New Jersey Intellectuals and the United States Constitution." *The Journal of the Rutgers University Libraries* 49, no. 2 (2012). doi:10.14713/jrul.v49i2.1670.

While many factors contribute to his value as a case study on the issue of Federalism, William Livingston's role as New Jersey delegate to the Federal Convention of 1787 is the primary factor that provides deep insight into his position as a *pragmatic Federalist*. While personal notes and official records of the convention indicate that Livingston was not active in the debates of the convention, surely someone who "was one of the best-known names of the Convention"<sup>12</sup> would hold a position that would denote him one way or the other, either as a Federalist or Anti-Federalist.

As someone with such a reputation for his tenacious political opinions, it would seem only logical that William Livingston should surely provide ample material for ascertaining his position on the issue of Federalism. Upon deeper research, however, despite Livingston's heavy involvement in governmental service as well as in the Federal Convention of 1787, there is surprisingly little evidence that conclusively proves that Livingston took a position about Federalism. In fact, this was the very same question that Theodore Sedgwick Jr. attempted to answer when writing, *A Memoir of the Life of William Livingston*.<sup>13</sup> Sedgwick had the benefit in his research of directing certain questions not well evidenced in the writing of William Livingston to still-living witnesses and correspondents of Livingston. In an attempt to ascertain an answer to the question of Federalism, Sedgwick wrote to former President James Madison<sup>14</sup> seeking insight into Livingston's role in the debates of the convention as they related to the issue of Federalism. Sedgwick inquired, "Did Mr. L— take an active part in the Debates & was he Considered as having

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<sup>12</sup> Catherine Drinker Bowen, *Miracle at Philadelphia* (Boston: Little, Brown, and Company, 1966), 65.

<sup>13</sup> Theodore Sedgwick, Jr., *A Memoir of the Life of William Livingston, Member of Congress in 1774, 1775, and 1776; Delegate to the Federal Convention in 1787, and Governor of the State of New-Jersey from 1776 to 1790. With Extracts from His Correspondence, and Notices of Various Members of His Family*. (New York: J. & J. Harper, 1833).

<sup>14</sup> While Madison was former President, Sedgwick was more interested in his insights as a member of the Federal Convention of 1787. Madison took extensive notes of the debates and proceedings of the convention, and at the time of Sedgwick's correspondence, was contemplating publishing these notes. This is referenced in Sedgwick's letter to Madison (see n.7) when Sedgwick writes, "I should very much desire to avoid making any inquiries, the answers to which might anticipate or interfere with the design generally attributed to you of publishing a full account of the proceedings of that Body —"



a leaning towards the federal party & principles?”<sup>15</sup> However, Sedgwick’s inquiry was to no avail. Madison responded two weeks later writing, “Mr Livingston...did not take an active part in [the convention’s] debates;” Madison then provided a more direct answer to Sedgwick’s question when he explained, “I am at a loss for a precise answer to the question whether he had a leaning to the federal party and principles,” and later, “With those however who did not enter with debate, and whose votes could not be distinguished from those of their State colleagues, their opinions could only be known among themselves, or to their particular friends.”<sup>16</sup> While Madison offers no indication one way or the other about Livingston’s sentiments on Federalism, he offers direction for uncovering the answer in the papers and correspondence of William Livingston.

While no surviving document in Livingston’s hand expressly outlines his position on Federalism, a comprehensive evaluation of his correspondence, speeches, and publications as well as details from the Federal Convention itself demonstrates that William Livingston did, in fact, strongly support the new US Constitution and, thus, the Federalist position. Without overtly interjecting into the public debates, William Livingston filled the role of, what I have termed, a *pragmatic Federalist*: one who was preoccupied with creating a national government that was functional and capable of protecting and preserving the rights of the governed.

### **Colonial Intellectualism**

William Livingston began his journey into Enlightenment Intellectualism in his early years studying at Yale. Many classical writings were required reading for Livingston, stretching back to Greek and Roman antiquity. While Livingston recognized the value of studying the classics and law, he also was passionate about extending education to include a more extensive study of

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<sup>15</sup> Theodore Sedgwick, Jr. to James Madison, January 27, 1831, Stockbridge, Massachusetts.

<sup>16</sup> James Madison to Theodore Sedgwick Jr., February 12, 1831, in *The Records of the Federal Convention of 1787*, Vol. 3 (New Haven, CT: Yale University Press, 1911), 496.

“geography, history, divinity, and rhetoric.” A focus on these subjects in education was “intended to ‘make a compleat Lawyer’ and to ‘contribute their part to the perfecting a Scholar,’” according to Livingston.<sup>17</sup> Other, more recent, works were also the subjects of study for Livingston. Works by John Locke became a focus for a young Livingston and many of the principles espoused by Locke became interwoven in Livingston’s own thoughts on political theory. Locke and Livingston shared similar histories, both men having grown up in politically charged climates. Locke experienced the upheavals of the mid-seventeenth century in England during and following the English Civil War. Livingston, on the other hand, witnessed the increasing tension between Great Britain and the American colonies during and after the Seven Years War.

Both men shared similar ideological views as well. In explaining the philosophical beliefs of Locke, Margaret Jacob describes attributes that also aptly apply to Livingston. She writes, “His essentially Christian understanding of human beings saw virtue and rationality as inseparably linked. Although depravity lurks in the human heart, he said, virtue can be learned and practiced.”<sup>18</sup> Both men held the belief that man was inherently depraved, but – embodying the intellectual ideology of enlightenment thought – could redeem himself through the perfecting of his virtue and the honing of his intellect.

Locke based his political ideologies on these philosophical principles. As a result, he formulated a political perspective that acknowledged the inherent flaws of absolutism and despotic monarchies and recognized representative republicanism as the best alternative for preserving individual liberty. To collect his thoughts on this matter and propagate them to a politically

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<sup>17</sup> Milton Klein, “The Rise of the New York Bar: The Legal Career of William Livingston,” (The William and Mary Quarterly, Vol. 15, No. 3, Jul. 1958), 357. The nested quotes indicate that Klein is citing Livingston’s own words. Their citation is enclosed in the following reproduction of Klein’s footnote: “‘Some Directions relating to the Study of the Law,’ in Livingston’s Book of Precedents, 139-142.”

<sup>18</sup> Margaret C. Jacob, *The Enlightenment: A Brief History with Documents* (Boston, MA: Bedford, 2001), 7.

charged, and increasingly intellectual public forum, Locke wrote one of his most famous works, *Two Treatises on Government*. Locke's first publication of *Two Treatises* was not printed until 1690, on the heels of the Glorious Revolution which took place in the preceding two years. Yet, Locke first drafted *Two Treatises* in the 1680s, a detail which indicates that Locke was not merely an apologist for the resultant increase in parliamentary power following the Glorious Revolution, but, more accurately, a proponent of republican revolution itself.<sup>19</sup> Based on the fact that Livingston was a student of Locke, a connection can be drawn between the principles contained in *Two Treatises* and those that Livingston began to voice in his early years of political involvement. One of the most notable principles of Locke's *Two Treatises* is the principle of separation of powers and divided branches of government. This principle was carried to fruition in Parliamentary England, but also found its outlet in the creation of the US Constitution during the Federal Convention of 1787.

However, many years prior to the drafting of the US Constitution, Livingston was already discussing the idea of separation of powers in his own writings. As a member of what famously became known as the New York Triumvirate,<sup>20</sup> Livingston began publishing his essays about political theory and other matters in a weekly magazine he was instrumental in founding, called the *Independent Reflector*. In "Of Party-Divisions," Livingston echoes Lockean political ideology, reasoning, "It must after all be allowed, that a long and uninterrupted Calm in a *Government divided into separate Branches, for a Check on each other*, is often presumptive, that all Things do not go well. Such is the restless and aspiring Nature of the human Mind, that a Man intrusted

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<sup>19</sup> Jacob, *The Enlightenment*, 10-11.

<sup>20</sup> The New York Triumvirate was the name given to the close-knit group comprised of New York lawyers, William Livingston, John Morin Scott, and William Smith Jr. The three grew close in their opposition to Anglicanism in the colony of New York and the affiliation of King's College in New York City with the Anglican Church. The three believed that the college should remain nondenominational in effort to preserve and maintain religious freedom. They devoted many of the essays in the *Independent Reflector* to this cause.

with Power, seldom contents himself with his due Proportion.”<sup>21</sup> Livingston not only references a divided government and the practice of checks and balances, but explains the necessity of the separate branches and their ability to “check on each other” citing the fact that, when given power, man tends to abuse it. He later defended the republican system, positing, “But this can never be our Case. Agreeable to the generous Spirit of our Constitution, we have a Right to examine into the Conduct and Proceedings of our Superiors.”<sup>22</sup>

The parallels between Locke’s and Livingston’s philosophical and ideological beliefs are apparent when comparing their writings. Even so, Livingston provides a more direct connection to Locke in his “List of Books for Library,” an inventory of the books he deemed worthy of inclusion in a library. Livingston not only includes works by Locke, but also offers commentary on their merits, citing that they are “so well worth reading.”<sup>23</sup> This advocacy for Locke’s works solidifies the fact that Livingston revered Locke’s writings and, subsequently, his philosophical and ideological principles, especially those that pertained to politics.

Livingston’s essay, “On Party-Divisions,” not only referenced Lockean political ideologies, but, more broadly, discussed the faults of factionalism and the dangers that lie therein. Party division and factionalism, Livingston argued, cause once noble goals to be corrupted into a fanaticism for party that replaces genuine motives with those only capable of dividing and alienating. Livingston begins the body of his essay with a simple and succinct line describing this transformation: “From the Moment that Men give themselves wholly up to a Party, they abandon their Reason, and are led Captive by their Passions.” He contrasts reason with passion, indicating

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<sup>21</sup> William Livingston, *The Independent Reflector*, ed. Milton M. Klein (Cambridge, MA: Harvard University Press, 1963), No. XIII, 22 Feb 1753, 147-48. Emphasis added.

<sup>22</sup> Livingston, *Independent Reflector*, No. XIII, 22 Feb 1753, 148.

<sup>23</sup> Livingston, “List of Books for Library,” n.d.; This appears as cited in Milton M. Klein, *The American Whig: William Livingston of New York* (New York, NY: Garland, 1993), 182,214. Klein adds, after the quote, the paraphrase: “that no library should be without them.”

that reason, logic, and rational thought – all attributes of the enlightened man – are forfeited when pure ideological beliefs are exchanged for party affiliation. He extends this critique of those who succumb to factionalism, methodizing, “A disinterested Love for their Country, is succeeded by an intemperate Ardor; which naturally swells into a political Enthusiasm; and from that, easy is the Transition to perfect Frenzy.”<sup>24</sup> One of his more reverberating lines, though, comes later in his essay when he conjectures, “It is something shocking to common Sense, to see the Man of Honour and the Knave, the Man of Parts and the Blockhead put upon an equal Foot, which is often the Case amongst Parties.”<sup>25</sup> Livingston, being somewhat an aristocratic elitist himself, found something notably repugnant about the fact that party affiliation tends to equate those of all stations and reputations, even saying that it goes against a basic “common sense.”

Bearing William Livingston’s extreme view on factionalism in mind, how does this inform an understanding of his stance on the issue of statehood and sovereignty? The debate over Federalism became so polarized that the question of factionalism was inherently, and possibly inseparably, tethered to it. So the question then becomes: How can Livingston, who so vehemently opposes factionalism and the notion of party division, rectify these views with actually taking a side in the federalism debate? One explanation – though lacking in credibility and evidence – may be that Livingston simply changed his mind on the issue of factionalism. After all, he writes “Of Party-Divisions” in 1753, thirty-five years prior to the federal convention. In that time, much had transpired in Livingston’s life and in North America. Could he have simply modified his opinion on the matter over that span of time? Perhaps. This explanation, however, would contradict with many of the trends evidenced in Livingston’s writings. Generally speaking, the issues that

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<sup>24</sup> Livingston, *Independent Reflector*, No. XIII, 22 Feb 1753, 143.

<sup>25</sup> Livingston, *Independent Reflector*, No. XIII, 22 Feb 1753, 145-46.

Livingston felt passionately enough about to write on, especially in the *Independent Reflector*, were issues that he had already reasoned out and which had become stolid principles in his mind.

A more plausible explanation rests in the manner in which Livingston approached the issue of Federalism. As stated in the Introduction, there are very few sources that plainly detail Livingston's support of the Federalist cause. All of the existing indications of his opinion on the matter are merely short phrases or ambiguous sentences spread throughout a myriad of sources that, only when examined within the context of each other, point to a definitive answer. The fact that Livingston held fast to his political ideologies and principles and allowed them to inform his stance on the issue of Federalism does not necessitate his approval of the factionalism that embodied the debate between Federalists and Anti-Federalists. The lack of direct engagement in the Federalism debates, on Livingston's part, supports the conclusion that he still believed party division to be dangerous and abstained from involving himself in an issue that had become so factionalized.

This conclusion is also supported in his essay, "Of Party Divisions." Livingston, having been equally devoted – if not more so – to his Faith as he was to his political ideologies, wrote, "Next to the Duty we owe the Supreme Being, we lie under the most indispensable Obligations, to promote the Welfare of our Country. Nor ought we to be destitute of a becoming Zeal and Fortitude, in so glorious a Cause: We should shew ourselves in earnest, resolute and intrepid."<sup>26</sup> Livingston believed that next to faithfulness to God was a devotion to the well-being of the country. Therefore, if he believed a cause to be in the best interest of the country, his support would be behind it. Livingston's pragmatism, demonstrated here, also serves to characterize his approach to the issue of Federalism. To demonstrate the application of this dichotomy, Livingston concludes

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<sup>26</sup> Livingston, *Independent Reflector*, No. XIII, 22 Feb 1753, 143-44.

his essay by summarizing the way in which anti-factionalism and patriotism should interact. In an ironic address to a position he would eventually come to find himself occupying, Livingston aptly charged, “shou’d a future Governor give in to Measures subversive of our Liberties, I hope he will meet with proper Opposition and Controul: But should a Faction be formed against him, without Law or Reason, may the Authors be branded with suitable Infamy.”<sup>27</sup> There was, Livingston believed, a time and place for factions to oppose an oppressor, but if the cause was not just, the actions of the factions would not be vindicated. The time for a faction of opposition would soon come in Livingston’s life when the American colonies would meet the British crown with “proper Opposition and Controul.”

### **From Harbingers of War to Election**

Livingston’s politics did not remain purely hypothetical and theoretical for very long; he soon involved himself in active colonial politics. Virtue was required to fully realize the political ideologies that William Livingston championed. The functioning of a government depended directly on the virtue of those not only in power, but also that of the governed. In “American Whig, No. XXV,”<sup>28</sup> Livingston pitted virtue against luxury, implying that once a group pursues luxury, virtue becomes void. When describing Americans, however, he attributed the positive aspect of this dichotomous relationship. Livingston’s critique was that Americans “are plain in their manners, virtuously disposed; neither puffer up by a love of pomp and luxury on the one hand, nor dispirited by poverty on the other.”<sup>29</sup> He believed Americans to be above, or not yet affected by, the corrupting power of luxury. However, Livingston was not as optimistic in his condemnation of the state of British society. Believing Great Britain to be completely corrupted, Livingston

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<sup>27</sup> Livingston, *Independent Reflector*, No. XIII, 22 Feb 1753, 148.

<sup>28</sup> The “American Whig” was a series of newspaper articles written by William Livingston and published by the New-York Gazette.

<sup>29</sup> As it appears in Levine, 31-32, n.133.

cautions, “Luxury is the Harbinger of a dying State, is a Truth too obvious to require the Formality of Proof.”<sup>3031</sup> William Livingston believed the end of British rule and tyranny in the American colonies to be near. He opposed what he saw as British oppression throughout the years leading up to the war, and while he was hesitant in declaring independence, once enacted, he became a leading patriot in the war efforts. Independence from Great Britain in and of itself, however, was not an issue of Federalism, but merely one of political discontentedness. Nevertheless, the process of independence and the issue of Federalism are inseparably linked and insight into Livingston’s view of Federalism can be gained through an examination of this connection.

A survey of the political atmosphere and context within which Livingston operates is necessary to truly understand William Livingston’s role in Independence. As tensions grew between Great Britain and the American colonies, Livingston’s political career was just beginning. While Livingston was politically active within the New York City sphere, his activity was largely relegated to partisan publications. It was not until Livingston served as a delegate of New Jersey to the First and Second Continental Congresses that his venture into public service began. Though leaving to serve as Brigadier General of the New Jersey Militia before Independence was declared,<sup>32</sup> Livingston remained closely tied to the proceedings of the Continental Congress. His acquiescence and service under the Continental Congress and the New Jersey Assembly provides an accurate picture of Livingston’s views of political hierarchy.

In May of 1776, while Livingston was still sitting as a member of the Continental Congress, the body began the legal process of Independence. Though the Declaration of Independence would

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<sup>30</sup> Levine, 32, n.135; Livingston, *Independent Reflector*, No. XXIX, 14 Jun 1753, 257.

<sup>31</sup> Bernard Bailyn, *The Ideological Origins of the American Revolution Fiftieth Anniversary Edition*, (Cambridge, Mass: Harvard University Press, 2017), VIII-X.

<sup>32</sup> Sedgwick, 182; Livingston left his post as a member of the Second Continental Congress on June 5, 1776 and returned to New Jersey to serve his new post of Brigadier General of the New Jersey Militia.



not be drafted for another month and the signing of the document for another two months, the congress had already begun the process for their separation from Great Britain. On May 10, 1776, the congress resolved to recommend to the state assemblies that they “adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.” That same day, the congress appointed John Adams, Edward Rutledge, and Richard Henry Lee to form a committee to draft the recommendation.<sup>33</sup> Three days later they presented a draft to the congress,<sup>34</sup> and on May 15, passed the resolution and ordered it published and sent to all of the colonial assemblies.<sup>35</sup>

John Adams celebrated the passage of this resolution in a letter to James Warren. He writes, “This day the Congress has passed the most important Resolution that ever was taken in America.”<sup>36</sup> What Adams recognized was that this was the beginning of Independence. However, what even he might have failed to comprehend was the magnitude to which this one resolution would come to matter. For the first time, a congress representing all of the colonies was exercising authority over the structure of governments of the individual colonies. This would begin the creation of a political hierarchy that would precede what would then become the governmental system under the Constitution.

The designs of the congress were clear: the colonies were to listen to the recommendation of the congress and construct new governments that fit the issued purpose and description. However, the colonies would have to respond in order for the resolution of the Continental Congress to be validated. In William Livingston’s state, the recommendation was heeded and the

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<sup>33</sup> JCC, Vol.4, 342.

<sup>34</sup> JCC, Vol.4, 351.

<sup>35</sup> JCC, Vol.4, 357-58.

<sup>36</sup> John Adams to James Warren, May 15, 1776, in *Letters of Members of the Continental Congress*, Vol. 1 (Washington, DC: Carnegie Institution of Washington, 1921), 445-46.

colonial assembly responded. On June 21, 1776, the colonial assembly of New Jersey voted on their own landmark resolution. “*Resolved*, That a government be formed for regulating the internal police of this Colony, pursuant to the recommendation of the Continental Congress of the fifteenth of May last.” The resolution passed with a vote of fifty-four to three, and a committee would be assigned to draft a state constitution.<sup>37</sup> On July 2, the assembly voted to confirm New Jersey’s new state<sup>38</sup> constitution.<sup>39</sup>

New Jersey created a state constitution ensuring the rights and privileges of not only the governed but also of the government. Some may interpret this to be a signal of New Jersey’s assertion of its autonomy and sovereignty, but that is an ill-informed stance. New Jersey’s own state constitution possessed references to the Continental Congress and its hierarchical authority.

In the second paragraph of the New Jersey Constitution of 1776, it states:

...as the honorable the continental congress, the *supreme council of the American colonies*, has advised such of the colonies as have not yet gone into measures, to adopt for themselves, respectively, such government as shall best conduce to their own happiness and safety, and the well-being of America in general: We, the representatives of the colony of New Jersey...have, after mature deliberations, agreed upon a set of charter rights and the form of a Constitution...<sup>40</sup>

Within this document outlining the structure and functions of their newly created state government, the representatives of New Jersey cite the Continental Congress as the supreme authority of all of the colonies. This clearly establishes a form of the governmental stratification that is present in the US Constitution, and thus a topic central to the issue of Federalism.

While William Livingston was temporarily absent from this political environment in his service as Brigadier General, his role was soon reinstated. In August of 1776 the New Jersey state

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<sup>37</sup> *Journal of the Votes and Proceedings of the Convention of New-Jersey: Begun at Burlington... (JVPCNJ)* (Forgotten Books, 2018), 23.

<sup>38</sup> The constitution would later be amended on Sep 20, 1777 to replace references to the “colony” with those to the “state.”

<sup>39</sup> JVPCNJ, 35-36.

<sup>40</sup> *Constitution of New Jersey*, 1776, emphasis added.

legislature unanimously elected William Livingston Governor of the State of New Jersey. As a man of principle who had demonstrated his willingness to oppose that which he protested, Livingston's acceptance of this role and the duties there attributed, signified his approval, to some degree, of not only New Jersey's new constitution and government, but also the authority of the Continental Congress in recommending the creation of new state governments and declaring independence from Great Britain.

William Livingston, now Governor of New Jersey, also assuaged any doubts of his approval in his first address to the New Jersey legislature upon his election. In his speech before the joint meeting of the Legislative Council and the General Assembly, Livingston champions:

Thus constrained to assert our own Independence, and dissolve all political Connection with [Britain]... the late "Representatives of the Colony of *New-Jersey* in Congress assembled, did, pursuant to the Advice of the Honourable the Continental Congress, the Supreme Council of the *American* Colonies, agree upon the Form of a Constitution;" which by tacit Acquiescence and open Approbation, hath since received the Assent and Concurrence of the good People of this State, to whose Consideration it was, for the Purpose, submitted.<sup>41</sup>

Here, in Livingston's own words (while a portion is quoted from the Constitution of New Jersey), is an affirmation that Livingston cited the authority of the Continental Congress and recognizes the assertion of the representatives of New Jersey that the Continental Congress was the "supreme council of the American colonies." From the outset, Livingston, and along with him, the entire state,<sup>42</sup> saw statehood within a structure of sovereignty in which they were now free from Great Britain, but yet owed some obedience to the Continental Congress.

### **Wartime and Conflagrations of the Confederation**

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<sup>41</sup> William Livingston, Address to the Legislature, Sep 11, 1776, *The Papers of William Livingston*, ed. Carl E. Prince, Vol. 1 (Trenton, NJ: New Jersey Historical Commission, 1979), 143.

<sup>42</sup> Livingston's speech indicates that the Constitution of New Jersey is supported by the constituency as well.

On June 11, 1776, the Continental Congress resolved to establish a committee that would draft a document outlining the structure of government in the American colonies,<sup>43</sup> which would later become known as the *Articles of Confederation and Perpetual Union*. The following day, the committee members were selected; the committee was to be comprised of one member from each colonial delegation. A total of twelve members were assigned to the committee.<sup>44</sup> The draft of the completed Articles of Confederation was presented and read on July 12 of that year,<sup>45</sup> but would not be formally adopted by the congress until November 15 of the following year.<sup>46</sup> The Articles of Confederation maintained a truly federal system of governmental stratification, leaving much of the power to the individual state governments, but also allowing for a joint-state legislature with limited power. It was under the Articles of Confederation that the American states operated during the war years. Over this period of time, and the period between the signing of the Treaty of Paris and the Federal Convention of 1787, the Articles would be tested, their flaws would become evident, and the new confederation would begin their struggle for survival.

Early on, the problems with the Articles were subtle and practically unnoticeable due to the American colonies' preoccupation with the war efforts. Despite this truth, Livingston, as Governor, still found himself exercising his discernment and prerogative over sorting out what were matters for the New Jersey State government to handle and what should be left for the infantile confederation congress to handle. In response to a letter from British prisoners seeking Governor Livingston's intervention in their captivity, Livingston's reply offers insight into the delineation between matters of the state and matters of the confederation. He responded, "In

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<sup>43</sup> JCC, Vol. 5, 431.

<sup>44</sup> JCC, Vol. 5, 433; New Jersey was not represented on the committee due to the fact that their delegation was not in attendance of the convention at the time. The New Jersey delegation would return to the Continental Congress later that June, under the leadership of John Witherspoon, in time to vote in favor of Independence. Witherspoon would later play a part in the drafting of the Articles of Confederation.

<sup>45</sup> JCC, Vol. 5, 546-54.

<sup>46</sup> JCC, Vol. 9, 907-28.

answer to yours of this month but without day, I can only say that tho' I sincerely commiserate your Situation, it is not in my power to grant you the desired discharge." Livingston refrained from any intervention on the grounds that he believed this to be a matter outside of his jurisdiction. He reasoned this point in his explanation of his inaction, justifying, "As you are Prisoners to the united States, no officer of any particular State is authorized to Give Mr. Campbell Leave to go to New York, Application for that purpose ought to be made either to General Washington,<sup>47</sup> or the [Continental] Congress."<sup>48</sup><sup>49</sup> Governor Livingston clearly identified the jurisdictions of state officials as opposed to those of the confederation and yielded to the authority of the confederation congress and its officers.

This yielding of jurisdiction and authority on Livingston's part solidifies and supports the notion that he believed sovereignty to be a stratified concept. There was a certain level of sovereignty that New Jersey possessed, and thus a certain level of authority that its officials could exercise. However, there was a larger sovereignty that correlated to the confederation to which New Jersey belonged, and thus, a level of authority over that of the state, one to which Livingston, as Governor, was duty-bound to obey. Livingston maintained this position towards authority throughout the war.

After the war had ended, the joys of achieving independence faded quickly from the minds of those in the American confederation. As the states transitioned back to normal life, the repercussions of the war, compounded with the loss of a common enemy, threatened the existence of the confederation. Crippled by debt, the states and the confederation congress struggled to meet the payments on their domestic and international loans. Testing the very authority of the

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<sup>47</sup> A commissioned officer of the Continental Congress.

<sup>48</sup> The Continental Congress.

<sup>49</sup> William Livingston, To British Prisoners, Oct 22, 1776, *The Papers of William Livingston*, ed. Carl E. Prince, Vol. 1 (Trenton, NJ: New Jersey Historical Commission, 1979), 169-70.

confederation congress, many states refused to make debt payments. As other states refused to make payments, those that were fulfilling their dues, including New Jersey, halted their transactions until the other states began to pay their portion. With no method of enforcement, the congress was rendered incapable of raising the necessary funds.

The legitimacy of the new federal government – and thus, the American states’ newfound independence – was endangered. Governor Livingston shared in the distress concerning the fate of the new confederation. In a letter to William Houston dated December 22, 1786, Governor Livingston worried, “I hope I am neither enthusiastic nor superstitious, but I have strange forebodings of calamitous times, and that those times are not very remote.”<sup>50</sup> For Livingston, the concern was not merely for future business or politics, but struck to the core of his own ideological principles. Livingston, eighteen years earlier, had heralded the virtue of the American people,<sup>51</sup> but facing the dismal reality of life in the American confederation, Livingston revoked his praise in exchange for accusation. Writing to Elijah Clarke, Livingston diagnosed, “We do not exhibit the virtue that is necessary to support a republican government; and without the utmost exertions of the more patriotic part of the community, and the blessing of God upon their exertions, I fear that we shall not be able, for ten years from the date of this letter, to support that independence which has cost us so much blood and treasure to acquire.”<sup>52</sup> Livingston believed that if things were to continue as they were, the fate of the confederation would soon follow; he even goes as far as to predict that such an event would happen within the next ten years.

Seeing the confederation in such dire circumstances, political leaders across the American confederation began calling for change; the federal system constructed in the Articles of

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<sup>50</sup> Quoted in Sedgwick, 402.

<sup>51</sup> Levine, 31-32, n.133.

<sup>52</sup> Livingston, To Elijah Clarke, Feb 17, 1787, *The Papers of William Livingston*, ed. Carl E. Prince, Vol. 5 (Trenton, NJ: New Jersey Historical Commission, 1988), 277.

Confederation was decrepit. Virginia initiated in February of 1786, proposing a convention of states to meet and discuss primarily the issue of commercial regulations.<sup>53</sup> Writing to Governor Livingston informing him of the Virginian initiative, Edmund Randolph invited New Jersey to participate in the convention, saying, “The Commissioners of Virginia have therefore only to request the concurrence of your State, and to propose the first monday in September next, as the time, and the City of Annapolis, as the place, for the meeting of the different deputies.”<sup>54</sup> New Jersey responded to the invitation and augmented the call for a quorum of the states to meet. On March 21, only about a month later, the New Jersey Legislature passed a resolution appointing Abraham Clark, William Churchill Houston, and James Scheuerman to the Annapolis Convention.<sup>55</sup>

William Livingston’s attitude towards the Annapolis Convention – and, subsequently, towards the Federal Convention of 1787 – was one of hopeful agency. Livingston believed that changes needed to be made in order for the republic to survive. In his letter to Elijah Clarke, Livingston charged, “Our situation, sir, is truly deplorable, and without a speedy alteration of measures, I doubt whether you and I shall survive the existence of that liberty for which we have so strenuously contended.”<sup>56</sup> Livingston was expressly in favor of whatever changes were necessary in order to ensure the proper operation of government in America. While Livingston issued this call for alterations before the Federal Convention of 1787 even convenes, it can safely

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<sup>53</sup> “To tarnish the glory” National Virtue and the Constitutional Convention, *The Papers of William Livingston*, ed. Carl E. Prince, Vol. 5 (Trenton, NJ: New Jersey Historical Commission, 1988), 154; Livingston, From Edmund Randolph, Feb 19, 1786, *The Papers of William Livingston*, ed. Carl E. Prince, Vol. 5 (Trenton, NJ: New Jersey Historical Commission, 1988), 242-43.

<sup>54</sup> Livingston, From Edmund Randolph, Feb 19, 1786, 243.

<sup>55</sup> *A Journal of the Proceedings of the Legislative-Council of the State of New-Jersey: In General Assembly Convened at Trenton, on Tuesday the Twenty-fifth Day of October, in the Year of Our Lord, One Thousand Seven Hundred and Eighty-Five*. (Trenton: Isaac Collins, Printer to the State., 1785), 37; *Votes and Proceedings of the Tenth General Assembly of the State of New-Jersey, At a Session Begun at Trenton on the 25th Day of October, 1785, and Continued by Adjournments*. (Trenton: Isaac Collins, Printer to the State., 1785), 76; “To tarnish the glory,” 154.

<sup>56</sup> Livingston, To Elijah Clarke, Feb 17, 1787, Vol.5, 277.

be understood that Livingston saw the Federal Convention of 1787 and the drafting of the US Constitution as the fulfillment of this call.

### **Delegate to the Federal Convention**

In September of 1786, the Annapolis Convention met, but, lacking a quorum of the states, was rendered ineffective in enacting any changes to the Articles of Confederation or commercial regulations. Following the failed Annapolis Convention, another convention was called, this time, to take place in Philadelphia the following May. In addition to the several states' call for the need of a convention, another voice was added this time. On February 21, 1787, the Continental Congress – which witnessed, first-hand, the faults in the Articles of Confederation and saw the growing need for alterations to be made – endorsed the convention to be held at Philadelphia the following May, citing:

Whereas there is provision in the Articles of Confederation and perpetual Union for making alterations therein by the Assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which several of the states and particularly the state of New York by express instructions to their delegates in Congress have suggested a Convention for the purposes expressed in the following resolution and such Convention appearing to be the most probable mean of establishing in these states a firm national government.

*Resolved* that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several States be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government and the preservation of the Union.<sup>57</sup>

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<sup>57</sup> JCC, Vol.32, 73-74, n.1-3.



The call of the states was now legitimized by an act of the Continental Congress. The federal government now agreed, echoing Livingston's words, that "without a speedy alteration of measures,"<sup>58</sup> the government would be doomed.

New Jersey responded to the call of the delegates of the Annapolis Convention and on November 23, 1786 appointed David Brearley, William Churchill Houston, William Paterson, and John Neilson as delegates to the convention at Philadelphia. Governor Livingston was later added as a member of the delegation.<sup>59</sup>

With the Federal Convention of 1787 underway at Philadelphia, the New Jersey delegation quickly emerged as a leading voice in the debates. Paterson led the delegation and most famously championed his equal representation-based unicameral plan for the new federal legislature that became popularly known as the "New Jersey Plan." Despite the New Jersey delegation's assertiveness, Livingston remained largely silent. While some have argued that this behavior signaled either Livingston's ambivalence towards the subjects of the debates or his waning mental wherewithal, the more plausible explanation lies in Livingston's reputation as a public speaker. In 1774, John Adams on two occasions pointed to Livingston's lack of oratory ability noting that he was "a bad speaker, though a good writer,"<sup>60</sup> and that he was "no public speaker, but very sensible and learned and a ready writer."<sup>61</sup> A Georgian delegate at the Federal Convention of 1787, William

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<sup>58</sup> Livingston, To Elijah Clarke, Feb 17, 1787, 277.

<sup>59</sup> Livingston, Appointment of David Brearley, William Churchill Houston, William Patterson, and John Neilson, November 23, 1786, 263-64; Neilson later declined the appointment and on May 18, 1787, Governor William Livingston and Abraham Clark were appointed to join the delegation: see Livingston, Appointment of William Livingston and Abraham Clark to Federal Convention, May 18, 1787, 289-90; Clark also declined the appointment citing that the appointment to the conventional delegation would be "incompatible with his appointment to Congress," thus Jonathan Dayton was appointed to the position on June 5, 1787: see Merrill Jensen et al., eds., *The Documentary History of the Ratification of the Constitution.*, Vol. 3 (Madison, WI: State Historical Society of Wisconsin, 1978), 124; The final delegation was comprised of David Brearley, Jonathan Dayton, William Churchill Houston, William Livingston, and William Paterson. Houston would fall ill with tuberculosis and miss most of the convention, but would remain an official member of the delegation.

<sup>60</sup> Quoted in Levine, 15, n.52.

<sup>61</sup> Quoted in Lurie, 67.

Pierce, likewise noted of Livingston, “His writings teem with satyr and a neatness of style. But he is no Orator.”<sup>62</sup> Most poignantly, it was observed about Livingston that he was “a man who never *did*, who never *will*, and who never *can* speak in any publick assembly.”<sup>63</sup>

Despite Livingston’s silence in the general debates of the Federal Convention of 1787, his role as chairman of two pivotal committees within the convention evidences his stance on the issue of Federalism. Livingston served as chairman of the committee tasked with considering “the necessity and expediency of the debts of the several States being assumed by the United States.”<sup>64</sup> This was a topic of considerable passion for Livingston being that, as governor, he struggled with state financial crises throughout the previous several years. Livingston spent much time and ink fighting the New Jersey legislature over the issue of paper money and attempting to fulfill New Jersey’s war debt payments.<sup>65</sup> An Anti-Federalist position would be for the states to individually pay off their debts and contribute only their apportioned share towards the federal war debt. However, under Livingston’s oversight and guidance, the committee assigned to settling this issue reached a different decision. On August 21, 1787, Livingston submitted to the convention the report of the debt committee that concluded, “The Legislature of the United-States shall have power to fulfil the engagements which have been entered into by Congress, and to discharge as well the debts of the United States, as the debts incurred by the several States during the late war, for the common defence and general welfare.”<sup>66</sup> The solution to the issue of federal and state debt

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<sup>62</sup> William Pierce: Character Sketches of Delegates to the Federal Convention, in *The Records of the Federal Convention of 1787*, Vol. 3 (New Haven, CT: Yale University Press, 1911), 90.

<sup>63</sup> “Cincinnatus,” *The Papers of William Livingston*, ed. Carl E. Prince, Vol. 3 (Trenton, NJ: New Jersey Historical Commission, 1986), 184; also quoted in Levine, 15-16, n.53; Emphasis in original.

<sup>64</sup> Journal, Saturday August 18. 1787, in *The Records of the Federal Convention of 1787*, Vol. 2 (New Haven, CT: Yale University Press, 1911), 322.

<sup>65</sup> See Primitive Whig #1, *The New Jersey Gazette*, Jan 9, 1786; Primitive Whig #2, *The New Jersey Gazette*, Jan 16, 1786; Primitive Whig #3, *The New Jersey Gazette*, Jan 23, 1786; Primitive Whig #4, *The New Jersey Gazette*, Jan 30, 1786; Primitive Whig #5, *The New Jersey Gazette*, Feb 6, 1786; Primitive Whig #6, *The New Jersey Gazette*, Feb 13, 1786.

<sup>66</sup> Journal, Tuesday August 21. 1787, in *The Records of the Federal Convention of 1787*, Vol. 2 (New Haven, CT: Yale University Press, 1911), 352.

that Livingston and the committee issued was for the United States legislature to assume and discharge the individual debts of all of the states in the confederation. Not only were Livingston and the committee suggesting that the federal government be given authority over the assumption and discharge of all state debts – a truly Federalist principle in and of itself – but the implication was that the new national legislature would also have the power to raise funds through taxation in order to discharge the aforementioned debts. Based on this report, it becomes clear that, whether or not Livingston ever ascribed to the formal classification as a Federalist, he supported Federalist principles and the creation of a truly “national” government.

The second of the two committees that Livingston served as chairman for was that which tended to the issue of slavery. Slavery, having been a topic of dissention eleven years prior during the debate over the draft of the Declaration of Independence, was a matter which threatened the union of the newly formed confederation. For Livingston, this issue was one of deep personal and religious passion. Being a devout Christian and enlightened philosophe, Livingston found both Biblical and intellectual – as well as moral – objection to the peculiar institution of slavery. Seeing slavery as “so anti-Christian a practice,” Livingston posed:

Is it right and lawful for any part of the human species of whatever colour & in whatever part of the globe to send a vessel on a trading voyage to any other part of the globe for there stealing...the inhabitants of that country of any other colour & them thence to convey to another part of the world, & there to sell them for slaves? Why the man asking this question, would certainly be thought either a knave or fool, or both.<sup>67</sup>

Yet, despite Livingston’s personal sentiments towards the issue and institution of slavery, the committee resolved that “The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year

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<sup>67</sup> Livingston, To James Pemberton, Oct 20, 1788, Vol.5, 357-58.

1800<sup>68</sup> — but a Tax or Duty may be imposed on such migration or importation at a rate not exceeding the average of the Duties laid on Imports.”<sup>69</sup> What would seem like a corruption of character and morals on Livingston’s behalf was merely a compromise directed at securing a more functional government. Had Livingston and his fellow sympathizers not compromised with the southerners, the Constitution – and thus their entire effort for the past several months at the convention – would have never been signed nor adopted, much less ratified by the required nine states.

While Livingston held personal objections to this portion of the Constitution, he did not allow it to prevent him from lodging his support of the overall document. Livingston proved this rationale in a letter to James Pemberton the following year. While the subject was of New Jersey state resolutions regarding slavery, the application and justification is validly applied to Livingston’s chairmanship and membership on the committee in the Federal Convention of 1787. Livingston explained, “In this State, we have made some [essay?] (*sic*) towards the emancipation of slaves. It was my wish to have gone farther.” He went on to discuss why some level of achievement was better than nothing, reasoning, “when we find it impossible to obtain at the present all that we desire; & by insisting upon that all, run the risque of obtaining nothing; it is then prudence not to insist upon it; but to get what we can; & which obtained, paves the way for procuring the rest.”<sup>70</sup> Livingston did not foresee the Constitution being the direct impetus for the abolition of slavery, nor did he understand the Federal Convention as the forum for such. Heeding his own advice, Livingston saw the convention’s accomplishments and the compromise on slavery

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<sup>68</sup> While the committee agreed upon the 1800 date, when debated by the general convention, the date was moved back to 1808.

<sup>69</sup> Journal, Friday August 24. 1787, in *The Records of the Federal Convention of 1787*, Vol. 2 (New Haven, CT: Yale University Press, 1911), 396.

<sup>70</sup> Livingston, To James Pemberton, Oct 20, 1788, Vol.5, 357-58, n.5.

as a first step that would later pave the way for the abolition of slavery. Classifying Livingston as a Federalist does not declare or imply that he supported every aspect of the Constitution and the national government that it created, but that he saw the value in the document overall, and the potential it posed for the future nation.

### **Ratification and Factionalization**

The Federal Convention of 1787 concluded on September 17, 1787 with the signing of the Constitution of the United States by the delegates of the several states. Affixed to the document was one William Livingston, Governor of the State of New Jersey and delegate to the Federal Convention. However, though the debates of the convention had ended, the debates over ratification had just begun. It is in this period, in the midst of the struggle for ratification, that the contest between Federalist and Anti-Federalist became so vitriolic. Virginia and New York, as well as Pennsylvania and Massachusetts, became the stadiums – and the respective legislatures and publications, the arenas – that would house the debates over whether the Constitution would be accepted. The Federalists pushed for its adoption in efforts to quell the ineffectiveness of the Articles of Confederation. The Anti-Federalists protested that the centralized power in the national government proposed in the document was reminiscent of Great Britain, and of which they had just fought a costly war to oppose.

While the debates raged on, a very different atmosphere was present in the State and legislature of New Jersey. On October 25, 1787, Governor William Livingston and the other members of the New Jersey delegation to the Federal Convention of 1787 submitted a copy of the document along with its report.<sup>71</sup> Livingston and his fellow delegates reported, “That the commissioners so convened did, after long and serious deliberation, and with no small difficulty,

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<sup>71</sup> Excepting William Paterson who did not affix his name to the report submitted to the legislature, though he did sign the Constitution.

finally agree upon a plan for the government of the said United States.”<sup>72</sup> Upon receipt of this report and the attached copy of the Constitution, the Legislative Council wasted no time. On October 26, the General Assembly resolved *unanimously* in favor of convening a convention of the State regarding the adoption and ratification of the US Constitution.<sup>73</sup> There was little division in the state regarding the ratification of the Constitution and that included Governor William Livingston.<sup>74</sup> The convention would take place as planned and the State, by a unanimous vote, would become the third state to ratify the Constitution.<sup>75</sup> While there was no internal state need for William Livingston’s advocacy to acquire ratification of the Constitution, he nevertheless offers commentary, through his personal correspondence, on the ratification process and the factionalization between Federalist and Anti-Federalist that was so closely linked to it.

In a more general and indirect commentary on the issue of Federalism, Livingston provided a labyrinth of clues to his views on Federalism. In 1778, under the pseudonym, “Cato,” Livingston published an article in the *New Jersey Gazette* detailing the characteristics of a good Assemblyman.<sup>76</sup> While the context of the publication at the time would indicate the scope of his outline to be limited to the State of New Jersey, another letter, just over ten years later, provides

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<sup>72</sup> Merrill Jensen et al., eds., *The Documentary History of the Ratification of the Constitution.*, Vol. 3 (Madison, WI: State Historical Society of Wisconsin, 1978), 164, n.1, manuscript of commissioners report now housed at the New Jersey State Archives; Livingston, To the Legislative Council, Oct 25, 1787, Vol.5, 303-04.

<sup>73</sup> *Votes and Proceedings of the Twelfth General Assembly of the State of New-Jersey, At a Session Begun at Trenton on the 23rd Day of October, 1787, and Continued by Adjournments.* (Trenton: Isaac Collins, Printer to the State., 1787), 21; Merrill Jensen et al., eds., *The Documentary History of the Ratification of the Constitution.*, Vol. 3 (Madison, WI: State Historical Society of Wisconsin, 1978), 165.

<sup>74</sup> The unanimity with which New Jersey ratified the Constitution was atypical. Deeply rooted in New Jersey’s history as two separate colonies later joined together, many of the original political and cultural divisions remained even in a unified New Jersey. Livingston, as Governor, often faced opposition from members of the legislature from the western counties of New Jersey. However, on the issue of ratification, the Legislature was united. This is most likely due to the fact that New Jersey, as a small state and located between two major cities in the crossroads of American trade, stood to benefit substantially from the new Constitution.

<sup>75</sup> Delaware became the first to ratify the Constitution on Dec 7, 1787, followed by Pennsylvania on Dec 12, and New Jersey on Dec 18. New Jersey was only the second state to ratify by unanimous vote (Pennsylvania had a divided vote) and the first by magnitude of unanimity with a vote of 38-0 (Delaware ratification was approved 30-0).

<sup>76</sup> “Cato,” *The New-Jersey Gazette*, January 7, 1778; Self-transcribed.

context that allows for a much broader application of Livingston's attributes of a good Assemblyman, even extending them to an application within the Federalism debate itself.

In a letter to Mathew Carey on August 19, 1788, Livingston responded to Carey's request for material that could be republished in *The American Museum*, a Pennsylvania magazine of which Carey was the editor.<sup>77</sup> William Livingston enclosed a copy of "Cato" in his response to Carey, summarizing, "I also inclose a piece describing the duties of an assembly-man, by which, if *our Legislators* would regulate their conduct, I am persuaded we should have [...] [...] (*sic*) roguery than at present we are burdened with."<sup>78</sup> Not only does Livingston's enclosure of this piece signify his authorship of the anonymously published work, but it provides a new context within which Livingston's characteristics of a good assemblyman can be understood. Writing to someone from a different state, enclosing a piece to be republished in a circulatory of a different state, and referring to a collective "our Legislators" indicates that Livingston intended his work to be applicable not only within his state, but across the new nation.

Through this context the words of "Cato" describing a duty of a good assemblyman: "To detach himself from all local partialities, and county-interests, inconsistent with the common weal; and ever considering himself as a representative of the whole State, to be assiduous in promoting the interest of the whole, which must ultimately produce the good of every part,"<sup>79</sup> can be understood to have bearing on the issue of Federalism. The direct application is for a state representative, but the principles espoused here have application on a national level as well: considering oneself a representative of the whole, not merely of one part, promoting the interests of the whole, and producing good for all parts. For Livingston in 1788, based on the context of the

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<sup>77</sup> Levine, 110, n.2.

<sup>78</sup> Livingston, To Mathew Carey, Aug 19, 1788, Vol.5, 351; emphasis added.

<sup>79</sup> "Cato," *The New-Jersey Gazette*, January 7, 1778; Self-transcribed.

recent Constitution, these characteristics were aptly understood on a national level as well. Concerning oneself with the well-being of the whole, not merely of the part, is a principle well in line with the political ideologies of the Federalist movement.

William Livingston's support of Federalist principles can also be more directly and clearly found in his personal correspondence. He writes to several persons outside the state and comments on the status of ratification across the country. Responding to a letter from Jedidiah Morse,<sup>80</sup> Livingston commented on the promising status of New Jersey's ratification of the Constitution, detailing, "I can inform you of one fact which *gives me great pleasure*. It is that both the branches of our Legislature were unanimous in laying before the people the constitution planned by the late Convention;"<sup>81</sup> Livingston found "great pleasure" in reporting to Morse that the New Jersey Legislature was acting expediently in unanimity to proceed in the ratification process. He further commented on the ratification process in two of New Jersey's neighboring states: Connecticut and New York. Livingston wrote, "I hope & doubt not that the citizens of Connecticut will be as ready to adopt [the Constitution], as I have reason to think we shall: & then I think we shall soon make my native Country, New York, a little *sickish* of their opposition to it."<sup>82</sup> Livingston not only "hopes & doubts not" that Connecticut would follow shortly behind New Jersey in ratifying and adopting the Constitution but also desires to make New York "*sickish* of their opposition to it." This portion of the letter is uniquely insightful of Livingston's position on the issue of Federalism in that it provides, side by side, a positive affirmation of his support for the Constitution and its adoption as well as a negative denunciation of any opposition to such.<sup>83</sup>

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<sup>80</sup> Morse was in the process of compiling and publishing a geography book of the American States. Morse dedicated the work, *The American Geography*, to Livingston upon its publication in 1789; see Livingston, To Jedidiah Morse, Nov 1, 1787, Vol.5, 310, n.5.

<sup>81</sup> Livingston, To Jedidiah Morse, Nov 1, 1787, Vol.5, 309-10; Emphasis added.

<sup>82</sup> Livingston, To Jedidiah Morse, Nov 1, 1787, Vol.5, 309-10; Emphasis in original.

<sup>83</sup> For more on Livingston's commentary on the ratification processes of other states, see also: Livingston, To Ephraim Harris, Dec 3, 1787, Vol.5, 316.



In an official sense, however, Livingston was far more reserved in voicing his position on the issue of Federalism and the adoption of the Constitution, being virtually silent on the process of New Jersey's state ratification convention. New Jersey unanimously voted to ratify and adopt the Constitution on December 18, 1787, but Livingston did not address the Legislature prior to, during, or immediately following the state ratification convention. In fact, it was not until the following August that Livingston addressed the Legislature regarding their ratification of the Constitution. Despite the delayed response, Livingston's address to the New Jersey Legislature provides valuable insight into Livingston's view on the adoption of the Constitution and the prospect of a national government. Livingston wrote, "I *heartily congratulate* you on the adoption of the constitution proposed for the government of the United States by the federal Convention, and it affords me *great pleasure* that New Jersey has the honour of so early and so unanimously agreeing to that form of *national Government...*" Livingston, now in a fully official capacity, verbally endorsed the notion of a truly national government and voiced his congratulations and pleasure in the Legislature's adoption of the Constitution which so outlined.

Not restricting his address to a purely political position on the issue but also including his personal regards of the issue, he wrote, "We have now arrived at that auspicious era which, I confess, I have most earnestly wished to see. Thanks to God I have lived to see it."<sup>84</sup> Livingston was truly inspired by the accomplishment of establishing an effective and functional nation government. A mere year and a half earlier, Livingston had lamented, "Our situation, sir, is truly deplorable, and without a speedy alteration of measures, I doubt whether you and I shall survive the existence of that liberty for which we have so strenuously contended."<sup>85</sup> Yet, standing before

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<sup>84</sup> Livingston, To the Assembly, Aug 29, 1788, Vol.5, 354-55; Emphasis added; Sedgwick records the line, "I have most earnestly wished to see," as, "I have often wished that it might please Heaven to protract my life to see." See Sedgwick, 421.

<sup>85</sup> Livingston, To Elijah Clarke, Feb 17, 1787, Vol.5, 277.

his state Legislature, Livingston could now remark, “We have in particular been reduced to this danger by the want of an efficient national Government. But from this Constitution now adopted we have reason to hope for the re-establishment of public faith & private credit, of being respected abroad & revered at home.”<sup>86</sup> Livingston’s hope for his country was lasting liberty and prosperity which he believed would be made possible through the Constitution and the new national government.

While the sentiments within Livingston’s address are all too clear in classifying him as a Federalist, it remains peculiar that Livingston waited eight months after New Jersey’s ratification and adoption of the Constitution to address and congratulate the Legislature on their feat. Though the delay appears peculiar on the surface, upon further examination of Livingston’s personal correspondence, his rationale for such deferred action is revealed in a set of his letters. On July 10, 1788, Joshua Lathrop wrote to Livingston regarding unrelated issues. However, in his postscript, Lathrop wrote, “I humbly congratulate you in that ten States have adopted the New Constitution & hope that the other three will soon follow and that we yet may be a happy & united People.”<sup>87</sup> Only the approval of nine out of the thirteen states was necessary to ratify the Constitution, but without the support and adoption of the Constitution by two of the largest and most influential states – New York and Virginia – the Constitution likely would not have established the functional national government that it promised to. Lathrop writes to Livingston shortly after Virginia finally ratified the document,<sup>88</sup> citing that the tenth state had ratified the Constitution. Livingston responded:

I thank you for your congratulations on the adoption of the new constitution by ten States. It was indeed real joy to me, who have long been anxious to see a more

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<sup>86</sup> Livingston, To the Assembly, Aug 29, 1788, Vol.5, 354-55.

<sup>87</sup> Livingston, From Joshua Lathrop, July 10, 1788, Vol. 5, 337.

<sup>88</sup> Virginia ratified the Constitution on June 25, 1788. The state’s ratification was dependent on Madison’s acquiescence of introducing a bill rights to amend the Constitution upon the initial sitting of the new government.

efficient rational government than that of the confederation. You will have heard, before this comes to your hands, that New-York has made the eleventh. Some of their anti-federalists died hard; but since a pack of lazy fellows, mentioned in the gospel, who would not come to their work till the *eleventh* hour, received the same wages with those who came earlier, I believe we must forgive them.<sup>89</sup>

William Livingston's response to Lathrop is a key artifact in documenting Livingston's position on the issue of Federalism. It offers an explanation for Livingston's delay in addressing his own legislature regarding ratification, indicating that he had waited for New York and Virginia to join the required nine states, understanding that their support was essential to the new government's success. It also, in remarkably plain words, proves that Livingston desired an improved government to replace that of the confederation. Most drastically, though, it provides clear evidence for Livingston's ambivalence, at best, or abhorrence, at worst, of those who were identified as Anti-Federalists.

While not outright identifying himself as a Federalist, Livingston's words here inadvertently classify him as one. As Pauline Maier highlights, "Anti-Federalists" is a term bestowed upon those that opposed the new Constitution by the document's proponents.<sup>90</sup> "Federalists," as Gordon Wood points out, "is the name that the promoters of the national constitution gave themselves, quite shrewdly, because they really were nationalists, not federalists..."<sup>91</sup> In order to highlight their juxtaposition and to paint their opponents as un-American and obstructionist, the supporters of the Constitution, nationalists, referred to themselves as "Federalists," and those that disagreed with them, as "Anti-Federalists." The term "Anti-Federalist," thus carried a certain disdain with its use. Maier, citing William Findley of

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<sup>89</sup> William Livingston to Dr. Joshua Lathrop, August 2, 1788, as quoted in Sedgwick, 420-21; New York ratified the Constitution on July 26, 1788.

<sup>90</sup> Maier, *Ratification*, xiv-xv.

<sup>91</sup> Gordon S. Wood, "The Articles of Confederation and the Constitution," Humanities Texas, accessed May 21, 2018, <http://www.humanitiestexas.org/news/articles/gordon-s-wood-articles-confederation-and-constitution>.

Pennsylvania, posits, “the people who raised objections to the Constitution during the ratification struggle were ‘called Anti-federalists, as a name of reproach,’ and then added, ‘I do, and always did, treat the appellation with contempt.’”<sup>92</sup> Bearing Findley’s words, Maier elects to refrain from using such a term in her work,<sup>93</sup> but in the case of Livingston, this evidence illuminates the fact that his employment of such a term in his writing inherently aligns him with the Federalist position, since they were largely the only party to use the term. Without expressly designating himself as a Federalist, Livingston’s use of the term “Anti-Federalist” here and elsewhere implies, at the very least, his sympathy for the Federalist argument, or at the most, his allegiance with it, and thus, his degradation of the Anti-Federalists.

## Conclusion

Witnessing the influence of Enlightened Intellectualism on both European and North American society and politics, William Livingston became a unique figure placed in a fascinating time and even more fascinating position. From studying the classics and enlightened political theorists at Yale, practicing law in colonial New York under British rule, serving as delegate to the First and Second Continental Congresses and Brigadier General of the New Jersey Militia, and being elected Governor of New Jersey continuously from 1776 until his death in 1790, to eventually serving as delegate to the Federal Convention of 1787, Livingston’s experience crafted his position on Federalism.

Livingston’s experience with direct and representative governance validate him as a case study and lend credence to his belief that the Constitution, and subsequently the Federalist position which argued for a truly national government, was in the best interest of the United States and

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<sup>92</sup> Maier, *Ratification*, xv, n.6.

<sup>93</sup> “For that reason I preferred to type out ‘critics of the Constitution’ and its synonyms over and over.” Maier, *Ratification*, xv.

posed as the only viable alternative to ensure the future and success of the fledgling nation. Offering a fitting and rather poetic conclusion himself, Livingston resolved in a letter to Ezra Stiles on December 12, 1788:

I Sir, have lived to see adopted a new Constitution which promises national happiness. If we have not too many Antifederalists returned to the new Congress (for even among the sons of God, Satan dares to present himself) I hope it will prove a national blessing. And as I shall have, after that no concern with this world, I am ready as to all temporal affairs to take my chearful leave of it, with adopting respecting its liberty and happiness, the dying wish of Pierto Soave Polano... *esto perpetua* [*be thou everlasting*].<sup>94</sup>

Livingston, in favor of the Constitution, was a *pragmatic Federalist* – one, not so concerned with arguing the theoretical merits of a national government but with establishing a government that would effectively preserve and protect the rights and liberty of the people who so entrusted it with. Livingston wished the new government to be filled with those who believed in it, in that which it stood for, and in what it promised. He felt that his toil had not only been worthwhile, but was also completed. The Constitution was adopted and a new Government was born. Livingston was content to die, having witnessed and aided in the establishment of a new American national government.

While Livingston continued in his life of public service until the day he died, his self-written epilogue ultimately came true. Rhode Island, having declined to send any delegates to the Federal Convention of 1787, became the last state to ratify the Constitution on May 29, 1790. Livingston – whether by a measure of Divine Providence or mere poetic happenstance – died on July 25, 1790,<sup>95</sup> having lived just long enough to see all of the American states admitted to the Union under a new national government and Constitution.

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<sup>94</sup> Livingston, To Ezra Stiles, Dec 12, 1788, Vol.5, 362-64; Emphasis in original; Bracketed translation added.

<sup>95</sup> Livingston, Death Notice, Jul 28, 1790, Vol.5, 439.

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